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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Majid Zia

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MARSHALL & MELHORN, LLC
FOUR SEAGATE - EIGHTH FLOOR
TOLEDO, OH 43604

EXAMINER

BRINSON, PATRICK F

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

04/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/066,515	Applicant(s) ZIA ET AL.	
	Examiner Patrick F. Brinson	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-25,27-30 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-25,27 and 36 is/are rejected.
- 7) ☒ Claim(s) 28-30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter recited in claim 25 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Claim 25 recites the channel in the first portion has a greater than semi-circular cross-section and the channel in the second section has a less than semi-circular cross section, however this is not shown in the figs. regarding the embodiment with the first and second portions being connected by a hinge.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement

Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. Claims 25 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25 recites that one of the channels has a greater than semi-circular cross section while the mating channel has a less than semi-circular cross section. It is not clear how the channels will contact the piece of tubing substantially around its entire periphery in this configuration, as recited in claim 23. It would appear that the channel with less than semi-circular cross section will tend to bend the tubing to an oval type cross section, thus providing a gap between the tubing and the channel with the greater than semi-circular cross section. As previously mentioned, there are no figures to illustrate this feature.

Claim 27 recites the channel having at least a semi-circular cross section with adhesive being used if the cross-section is of a substantially semi-circular cross-section which is indefinite since it is previously recited that the channel is at least semi-circular in cross-section.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over 6,001,081 to **Collen**.

The patent to **Collen** discloses a tubing device comprising a tube support comprising, when closed, a curvilinear channel of substantially circular cross-section disposed therein for receiving and holding a piece of tubing (40), wherein the tube support comprises a first portion (12) and a second portion (14) with each portion comprising a channel of semi-circular cross section and being connected by hinge (16). The channels are configured to align with each other to hold the tubing between them. Fig. 4 discloses that when the tube support is closed, the channels are configured to form a cylindrical channel when aligned thus forming a curvilinear channel of substantially circular cross-section, fig. 4. **Collen** does not specifically disclose the channel contacting the piece of tubing substantially around its entire periphery. **Collen**, however does disclose that channel dimensions as well as the

radius of curvature may be changed to accommodate different sized tubing.

Additionally the size of the tubing may increase to a diameter at which time the channels would contact the tubing substantially around the entire periphery. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the channels and or the tubing as taught by **Collen** in order for the channels to substantially contact the tubing about its entire periphery.

3. Claims 23-25 and 36 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5,916,199 to **Miles**.

The patent to **Miles** discloses a tubing device comprising a tube support comprising, when closed, a curvilinear channel of substantially circular cross-section disposed therein for receiving and holding a piece of tubing (20), wherein the tube support comprises a first portion (58) and a second portion (70) with each portion comprising a channel of semi-circular cross section and being connected by hinge (48). The channels are configured to align with each other to hold the tubing in between. Fig. 3 discloses one channel (60) having a less than semi-circular cross section, while the mating channel (74) is greater than semi-circular, thus allowing the tube to be snapped and held in place prior to closing of the two pieces. **Miles** does not disclose the channels being in contact with the tubing substantially around its periphery, however to provide the channel in contact with the entire periphery is but

an obvious choice of mechanical expedients wherein **Miles** adequately functions to hold the tubing securely and prevent movement of the tube therein. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the channels and/or the tubing of **Miles** to allow the channels to contact the tubing substantially about its entire periphery in order to secure the tubing therein and prevent movement of the tubing once first and second channels are closed.

Response to Amendment

4. The only amendment to the claims was an addition to claim 27. Applicant states that claim 27 has been re-written to include all the limitations of claim 15 and 16, however this is not entirely accurate. Claim 15 also included the limitation of the channel “lying in substantially a single plane and a means for holding a piece of tubing in the support member, the means comprising the channel having at least a semi-circular cross section”, however this portion of claim 15 was not included in claim 27. As pointed out previously, the limitation is important in providing the alternative means of holding the piece of tubing within the support when the channel has a less than semi-circular cross section. It is also suggested, however, that if the previous language from claim 15 is put back into claim 27 that the language of the channel being the means of holding the piece of tube is clarified with language similar to that

disclosed in the specification, pages 16 and 23, which point out that the tubing is held in slight compression due to its having a less than semi-circular cross section, wherein simply reciting that the means for holding the tube comprises the channel having at least a semi-circular cross section is not really clear.

Claim 20 was previously indicated as being allowed, however the newly discovered reference to **Collen** discloses the same structure of the tubing support as that claimed by the present invention with the exception of the channels contacting the tube substantially around the entire periphery. This difference is merely a matter of size, wherein a tube placed within the device having a larger diameter would be contacted substantially about its entire periphery. Also **Collen** discloses that the channel dimensions can be modified to fit various size tubings.

Allowable Subject Matter

5. Claim 27 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
6. Claims 28-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kevin P. Shaver** can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patrick F. Brinson/
Primary Examiner, Art Unit 3754

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P. F. Brinson
April 3, 2008